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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.253 OF 2005

Hajra Ikram Chand)
35/B, Jubilee Bldg., 2nd floor,)
Sankli Street, Byculla, Mumbai)
- 400 008.) ... Petitioner
(Wife of Detenu)

Versus

1. The State of Maharashtra,)
Through the Secretary to the)
Govt. of Maharashtra, Home)
Department, Mantralaya,)
Mumbai - 400 032.)

2. Neela Satyanarayana,)
The Principal Secretary to)
the Govt. of Maharashtra,)
Home Department (Appeals and)
Security), and Detaining)
Authority, Mantralaya,Mumbai.)

3. The Superintendent of Prison,)
The Mumbai Central Prison,)
Arthur Road, Mumbai.)

4. The Superintendent of Prison,)
Nasik Road Central Prison,)
Nasik.) ... Respondents

Mr. Shirish Gupte, senior counsel with Mr. Maqsood Khan for the petitioner.

Mr. D.S. Mhaispurkar, A.P.P. for the respondents-State.

CORAM: SMT. RANJANA DESAI &
D.B. BHOSALE, JJ.

DATED: 13TH JUNE, 2005.

ORAL JUDGMENT:- (**Per Smt. Ranjana Desai, J.**)

1. In this petition filed under Article 226 of the Constitution of India, the petitioner who is the wife of one Ikram Nisar Chand (for convenience, "the detenu"),

has challenged the order of detention dated 6/1/2005 issued by the Principal Secretary (Appeals and Security), Government of Maharashtra, Home Department, Mantralaya, Mumbai - 400 032, in exercise of powers conferred on him by section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, "the COFEPOSA") with a view to preventing him in future from engaging in transporting or concealing or keeping smuggled goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods.

2. The order of detention, grounds of detention and material in support thereof were served on the detenu on 6/1/2005.

3. From the grounds of detention, it appears that on 5/6/2004, officers of Air Intelligence Unit, C.S. International Airport, Sahar Mumbai, on suspicion, intercepted the detenu, holder of Indian Passport issued at Dubai on his arrival from Dubai by flight EK 504 and after the detenu had cleared himself through walk through green channel. On being asked by the AIU officers as to whether he was carrying any dutiable goods, he replied that he was carrying only one mobile phone. Preliminary investigation on scrutiny of the detenu's passport revealed that he was a frequent visitor and had made 19 trips from January 2004 till 5/6/2004, all for short duration for stay abroad. Search of the detenu in person

and baggage in the presence of independent witnesses resulted in the recovery of thirteen costly wrist watches of Cartier and Jaecar Le Coultre make and two mobile phones collectively provisionally valued at Rs.30,82,000/- CIF and Rs.61,44,000/- LMV. The watches were found cleverly concealed inside the socks worn by the detenu, his coat pockets and tied to his wrists covered by his coat sleeves. On being asked in the presence of panchas, he stated that the said goods were given to him by one person in Dubai to be handed over to various persons in Mumbai and that the wrist watches were concealed on his person as per the direction of the said person in Dubai to avoid detection by Customs. The watches and mobile phones were seized under a panchnama in the reasonable belief that the same were smuggled into India and, hence, liable to confiscation under the provisions of the Customs Act, 1962. The grounds of detention indicate that the detenu did not co-operate with the investigating agency and throughout gave evasive answers. We shall advert to his statements a little later. Suffice it to say that on the basis of the statements of the detenu recorded under section 108 of the Customs Act and other attendant circumstances, the detaining authority was satisfied that it was necessary to detain the detenu under the COFEPOSA Act with a view to preventing him in future from engaging in transporting or concealing or keeping smuggled goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. In the

circumstances, the instant order of detention came to be issued.

4. We have heard, at considerable length, Mr. Gupte, the learned counsel appearing for the petitioner. Mr. Gupte contended that the order of detention indicates total non application of mind on the part of the detaining authority. He submitted that the activities mentioned in the order of detention fall under section 3(1)(iii) and section 3(1)(iv) of the COFEPOSA Act. He submitted that the said two heads of detention cannot be invoked, at a time, against the same person, because a person cannot indulge in transporting or concealing or keeping smuggled goods and at the same time indulge in dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. The learned counsel urged that, in any event, if it is assumed that the detenu has brought the mobile phones and the wrist watches from abroad, that activity would only fall under section 3(1)(i) of the COFEPOSA Act i.e. smuggling of goods. The detaining authority, therefore, erred in issuing the order of detention under section 3(1)(iii) and section 3(1)(iv) of the COFEPOSA Act and on that ground, the order of detention must be set aside.

5. In this connection, the learned counsel also drew our attention to paragraph 17 of the grounds of detention where the detaining authority has stated as follows:

"Thus from the above mentioned facts and circumstances, it is evident that your activities amount to smuggling of goods as defined in section 2(39) of the Customs Act, 1962 and as adopted in the COFEPOSA Act, 1974 viz. section 2(e) thereof as their acts of commission and omission have rendered the goods involved liable to confiscation under Section 135 of the Customs Act, 1962."

6. The learned counsel urged that the detaining authority herself has described the activities of the detenu as amounting to smuggling of goods. Therefore, the order issued under section 3(1)(iii) and section 3(1)(iv) is clearly bad in law. The learned counsel also drew our attention to the affidavit filed by the detaining authority. Drawing our attention to paragraph 6 of the affidavit, the learned counsel urged that the detaining authority has denied that the act of the detenu in bringing the mobile phones and wrist watches from abroad would fall under the head 3(1)(i) of the COFEPOSA Act i.e. smuggling of goods. The learned counsel submitted that this averment in the affidavit in reply is clearly contrary to paragraph 17 of the grounds of detention and this indicates that the detaining authority was totally confused when she issued the detention order and, therefore, the order of detention must be set aside.

7. We are unable to accept this submission of Mr. Gupte. It appears from the grounds of detention, the affidavit in reply and the material in support of the grounds of detention that the detenu had made 19 trips abroad from January 2004 till 5/6/2004. All those trips were for short duration. The watches recovered from the detenu were found cleverly concealed on his person. In his statement recorded on 15/6/2004 under section 108 of the Customs Act, the detenu has stated that he wanted to take the goods to Singapore. His another statement came to be recorded on 29/6/2004 wherein the detenu has stated that he was doing the business of import and export at Dubai. He also stated that he was sending the money through banking channel. Thereafter, his statement was recorded on 30/6/2004 wherein he has stated that he was working as a representative of Khalba Computers in Dubai on a monthly salary of 5500 Dirhams and his company has paid for the air fair in cash for the 19 trips he has made to India in the year 2004. In his further statement recorded on 12/7/2004, the detenu has stated that he used to go to different countries for delivering the watches to the clients of his employer and he used to keep such watches at Dubai Customs and pick them for delivery while passing through Dubai and he also agreed to produce the purchase bills for the seized watches along with the price list of the manufacturers. On 13/7/2004, in his further statement, he has stated that he did not know the price of the seized phones. He did not give the name of his relative who was travelling with him from Dubai to

Mumbai on the day of the seizure. On 19/7/2004, the detenu gave name of his co-passenger relative as Abdulla but he did not give his address and refused to give further details about the said co-passenger. It is apparent from the above that the detenu could not satisfactorily explain how the undeclared goods were found with him and from where they came. His statements are contradictory and evasive. His activities which are clearly evident from the statements, the gist of which we have quoted hereinabove, justify the passing of the order of detention with a view to preventing him in future from engaging in transporting or concealing or keeping smuggled goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. There can be no doubt that the detenu had transported, kept and concealed smuggled goods. The act of the detenu in handing over the watches to the respective persons amounts to dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods.

8. The contention that in the grounds of detention, the detaining authority has also stated that the activities of the detenu amount to smuggling of goods and this indicates non application of mind, must also be rejected. It is necessary to see in what context the detaining authority has said so. The detaining authority has referred to section 2(39) of the Customs Act and as adopted in the COFEPOSA Act i.e. section 2(e) thereof.

The detaining authority has also referred to section 135 of the Customs Act. Section 2(e) of the COFEPOSA Act reads as under:

> "2. Definitions.- In this Act, unless the context otherwise requires -
>
> (a) x x x
>
> (b) x x x
>
> (c) x x x
>
> (d) x x x
>
> (e) "smuggling" has the same meaning as in clause (39) of section 2 of the Customs Act, 1962 (52 of 1962), and all its grammatical variations and cognate expressions shall be construed accordingly."

9. Section 2(39) of the Customs Act defines smuggling of goods, which reads as under:

> "2. Definition. - In this Act, unless the context otherwise requires,
>
> x x x

> (39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113".

10. There can hardly be any doubt that the goods recovered from the detenu were liable to confiscation. It is against this background and after referring to section 2(39) of the Customs Act and 2(e) of the COFEPOSA Act, that the detaining authority has stated that the activities of the detenu amount to smuggling of goods. This averment is broadly made. No inference can be drawn from this averment that the detention order was issued under section 3(1)(i) and not under section 3(1)(iii) and (iv). This is further clear from the fact that in the same paragraph, towards the end, the detaining authority has clarified as under:

> "Therefore, it is need to be detained you under COFEPOSA Act, 1974, with a view to preventing you in future from engaging in transporting or concealing or keeping smuggled goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods."

11. We are also unable to accept the submission of Mr.

Gupte that the affidavit of the detaining authority discloses any confusion prevailing in the mind of the detaining authority when she passed the order of detention. We will examine this submission. In the petition, the petitioner has averred as under:

> "The petitioner says and submits that even if it is assumed that the detenu had brought the mobile phones and the wrist watches from abroad, that activity would fall under the head (i) i.e. smuggling goods of section 3(i) of the COFEPOSA Act, 1974".

What was sought to be conveyed was that the activities of the detenu can only be described as smuggling of goods. While replying this contention, the detaining authority has rightly denied that the act of the detenu would fall under section 3(1)(i) of the COFEPOSA Act i.e. smuggling of goods. In the affidavit in reply it is reiterated and emphasised that the order of detention is issued with a view to preventing the detenu in future from engaging in transporting or concealing or keeping smuggled goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods and we have no doubt that the order is passed after proper application of mind and having regard to the nature of the prejudicial activities indulged in by the detenu. The

denial complained of is consistent with the detaining authority's stand and is in tune with the order of detention. The attempt on the part of the detenu to try to defeat the order of detention by reading averments made in the grounds and affidavit out of context must be repelled. It can only be described as hair-splitting. In this connection, we are reminded of what the Supreme Court has said in **Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala and others, AIR 1986 SC 687.** The Supreme Court has stated that even while there is no rule of law, that commonsense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by authorities though these constitutional provisions should be strictly construed.

12. In this connection, Mr. Gupte sought to rely upon several judgments. It is not necessary to refer to all of them because they are on similar lines. In our opinion, the facts of the present case clearly bear out the order of detention issued by the detaining authority and, therefore, the judgments relied upon by Mr. Gupte will not be applicable to the present case. In those cases, it was found by this court that either there was variance between the order of detention and the grounds of detention or the order of detention was not borne out by the material placed before the detaining authority. We may only refer to one judgment in **Criminal Writ Petition No.329 of 1984 (Hajarimal Veerchand Jain v. State of Maharashtra & Anr.) decided on 12/11/1984**. In that case, it was argued that on the basis of the material placed before the detaining authority, the

detaining authority could not have come to the conclusion that the detenu was keeping smuggled goods and dealing in them. On the facts, it was held that from the quantity and the value of other goods recovered from the detenu's possession, it cannot be said that he was dealing in smuggled goods on such a large scale, that he should be deemed to have smuggled the goods himself or abetted smuggling of goods. It was further observed that merely purchasing from seamen, may be unknown, goods which were already smuggled, would neither amount to smuggling nor abetment thereof and, therefore, there is no justification for concluding that the detenu was smuggling goods or was abetting smuggling of goods making his detention necessary to prevent him from doing so. This court referred to the judgment of the Supreme Court in **Narendra Purshotam Umrao v. B.B. Gujral and others, AIR 1979 SC 420**, where it was held that sub-section 1 of section 3 of the COFEPOSA Act provides for different grounds of detention and, hence, it must be assumed that the intention of the legislature was to treat smuggling of goods and abetting smuggling of goods as grounds separate and distinct and, hence, both are separate grounds of detention i.e. to take in all such activities which result in accomplishment of smuggling of contraband goods. Necessary corollary of this conclusion is that the activity of smuggling of goods mentioned in clause (i) of sub-section (1) of section 3 must be attributed

restrictive meaning. It was further observed that a person found indulging in the activities mentioned in clauses (ii) to (v) cannot be detained for smuggling of goods or abetting smuggling of goods unless the activities are of such nature and volume that they lead to the conclusion that not only the detenu was indulging in those activities but was also smuggling goods or was abetting smuggling thereof.

13. There can be no doubt about this proposition but as already noted by us, in our opinion, in the facts of this case, the detenu could be said to be engaging in transporting or concealing or keeping smuggled goods and also dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods and, therefore, on facts, we do not find that it could be urged that the detention order is not supported by the material placed before the detaining authority. The judgments cited by Mr. Gupte could have no application to the facts of this case. The first submission of Mr. Gupte must, therefore, fail.

14. Connected with this submission is another submission of Mr. Gupte that the order of detention has been issued by the detaining authority by using the conjunction "or" in the impugned order of detention. According to Mr. Gupte, the detaining authority ought to have used the conjunction "and" and not "or" and the use of the word "or" in the order of detention as well as in the grounds

of detention demonstrates vacillating mind of the detaining authority. Mr. Gupte submitted that the detaining authority was not sure as to for which activity, the detenu was to be detained. According to Mr. Gupte, if the detaining authority felt that the detenu was engaging in transporting, concealing as well as keeping smuggled goods then the detaining authority ought to have used the conjunction "and" and not "or". Because of the use of conjunction "or" it is not clear as to whether the detaining authority wanted to prevent the detenu from transporting or concealing or keeping smuggled goods. The learned counsel pointed out certain orders of detention issued by the Central Government where the Central Government has used the conjunction "and" thus conveying to the detenu exactly for what purpose, he was being detained. Mr. Gupte contended that the confusion of the detaining authority has also led to denying the detenu an opportunity of making an effective representation against the detention order inasmuch as it was not possible for the detenu to know for what purpose he was detained. In support of his submission, Mr. Gupte relied on the judgment of the Constitution Bench in **Jagannath Misra v. State of Orissa, AIR 1966 SC 1140**, judgments of the Supreme Court in **Kishori Mohan Bera v. The State of West Bengal, AIR 1972 SC 1749, Akshoy Konai v. State of West Bengal, AIR 1973 SC 300** and an unreported judgment of the Karnataka High Court in **Neelaiah Gopaiah Rathod v. The State of Karnataka & Anr., in Writ Petition No.5 of 1986 decided**

on 14/3/1986. To counter the argument of Mr. Gupte, Mr. Mhaispurkar, the learned A.P.P. relied on the judgment of this Court in **Rajesh Vashdev Adnani v. The State of Maharashtra, in Criminal Writ Petition No.2482 of 2004 decided on 18/3/2005**.

15. In our opinion, there is no substance in this submission of Mr. Gupte. We have already discussed the nature of prejudicial activities in which the detenu was engaged. His activity is so vividly described in the grounds of detention that according to us there is no question of the detenu in any way being confused and unable to know for what purpose he was detained. We also feel that engaging in transporting or concealing or keeping smuggled goods are three facets of the detenu's activities, clearly evident from his statements recorded under section 108 of the Customs Act and the other material on record. But even otherwise, assuming that the usage of conjunction "or" is improper, we feel that the present order of detention can be held valid on the basis of section 5A of the COFEPOSA Act. Section 5A reads thus:

> "5A. Grounds of detention severable. – Where a person has been detained in pursuance of an order of detention under sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made

separately on each of such grounds and accordingly -

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are -

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of section 3 with reference to the remaining ground or grounds and made the order of

detention.

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds.

16. In **Attorney General for India and others v. Amratlal Prajivandas and others, (1994) 5 SCC 54**, the Constitution Bench has while upholding the validity of section 5A of the COFEPOSA Act held that the first part of this section creates a legal fiction i.e. it must be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent order. Consequently, if one ground fails, if the rest of the grounds are valid, the detention order can still be upheld.

17. In **State of Gujarat v. Chamanlal Manjibhai Soni, AIR 1981 SC 1480**, the Supreme Court was dealing with section 5A of the COFEPOSA Act. In that case, while construing section 5A, the Supreme Court observed as under:

"It is manifest that whenever the

allegations of smuggling are made against a person who is sought to be detained by way of preventing further smuggling, there is bound to be one act or several acts with the common object of smuggling goods which is sought to be prevented by the Act. It would, therefore, not be correct to say that the object of the Act constitutes the ground for detention. If this is so, in no case there could be any other ground for detention, except the one which relates to smuggling. In our opinion, this is neither the object of the Act nor can such an object be spelt out from the language in which Sec. 5-A is couched. What the Act provides is that where there are a number of grounds of detention covering various activities of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of detention. The reason for enacting Sec.5-A was the fact that several High Courts took the view that where several grounds are mentioned in an order of detention and one of them is found to be either vague or irrelevant then the entire order is vitiated because it cannot be predicated to

what extent the subjective satisfaction of the authority could have been influenced by the vague or irrelevant ground. It was to displace the basis of these decisions that the Parliament enacted Sec.5-A in order to make it clear that even if one of the grounds is irrelevant but the other grounds are clear and specific that by itself would not vitiate the order of detention."

18. In **Prakash Chandra Mehta's case (supra)**, the Supreme Court again reiterated the same view. In that case, the order was issued under the COFEPOSA Act. One of the contentions urged before the Supreme Court was the retraction of the confessions or statements made under Section 108 of the Customs Act had not been taken into consideration. The Supreme Court referred to section 5A and observed that the other material which was on record such as -

"(1) The search and seizure at room No.316 at Dwaraka Hotel and recovery of 60 gold biscuits.

(2) The fact that the importation of the 60 gold biscuits could not be explained by the detenu Venilal.

(3) The secretive manner in which the said

gold biscuits were kept.

(4) The connection with the various dealers as mentioned hereinbefore and the statements of the employees of the dealers that the father and the sons used to come with gold bars."

were in addition to the statements and confessions made under section 108 of the Customs Act. So even if the statements made under section 108 by the father, the sons and the daughter are ignored and obliterated, the other facts remain and these are good enough materials to come to the prima facie belief that detention of the detenu was necessary.

19. Therefore, Mr. Gupte is not right in submitting that in order to attract section 5A of the COFEPOSA Act, there will have to be several independent acts of smuggling. Different activities which form part of one prejudicial activity would each amount to a ground and, therefore, if one of such grounds is obliterated, the order of detention can be sustained on the basis of rest of the grounds by resorting to section 5A. We may usefully refer to **Rajesh Vashdev Adnani's case (supra),** where an identical view has been taken by the Division Bench of this court. Applying the ratio of all these judgments to the case on hand, we feel that even if one of the activities out of the activities of the detenu in

engaging in transporting or concealing or keeping smuggled goods is obliterated, the present order of detention can be upheld on the basis of rest of the grounds. Besides even if it is held that the order issued under section 3(1)(iii) cannot be sustained, by resorting to section 5A, it can still be upheld so far as it relates to section 3(1)(iv) because the detaining authority is very clear in the order of detention that she had issued the order of detention with a view to preventing him in future from engaging in transporting or concealing or keeping smuggled goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods. Here the conjunction used is "and" and not "or". There is enough material to indicate that the detenu was dealing in smuggled goods.

20. The judgments cited by Mr. Gupte on this point are under the Maintenance of Internal Security Act where there was no provision like section 5A. The said judgments would, therefore, be of no assistance to Mr. Gupte. So far as the judgment of Karnataka High Court is concerned, first of all, the facts are not clearly stated by the Karnataka High Court and since, we have the judgment of this court in **Rajesh Vashdev Adnani's case (supra)** in the field, we would rather follow the same. In our opinion, the judgment of this court in **Rajesh Vashdev Adnani's case (supra)** is clearly applicable to the facts of this case.

21. It was argued by Mr. Gupte that on the basis of section 5A, the grounds of detention can be severed but section 5A will not save the order which is vitiated because of non application of mind. We need not labour on this submission because this court has in **Rajesh Vashdev Adnani's case (supra)** clearly held that section 5A would cover all cases and it is not open to contend that if there is non application of mind qua one ground, section 5A will not save the order of detention. Out of several grounds, even if one ground of detention is borne out by the material and if that ground does not suffer from any vice including that of non application of mind, it can be the basis of detention order and the detention order can be held valid on that ground. The words "invalid for any other reasons whatsoever" found in section 5A(a)(v) would cover the vice of non application of mind qua a particular ground also. This submission of Mr. Gupte is, therefore, rejected.

22. Mr. Gupte, then argued that the sponsoring authority has placed before the detaining authority the show cause notice issued to the detenu on 30/11/2004 but has failed to place before the detaining authority the reply to the said show cause notice filed by the detenu and, therefore, the subjective satisfaction of the detaining authority is vitiated. He submitted that on this ground also the order of detention must be set aside. In this connection, Mr. Gupte relied on several

judgments. It is not necessary to refer to all the judgments because the same view is reiterated in all the judgments. We will only refer to the judgment of the Supreme Court in **Kurjibhai Dhanjibhai Patel v. State of Gujarat & Ors, 1985 (1) SCALE 136** while dealing with this submission.

23. The reply to the show cause notice is annexed to the petition. In the reply, on behalf of the detenu, the detenu's advocate has made a statement that each and every allegation levelled against the detenu in the show cause notice is denied. It is further stated that the contents of the show cause notice and several panchnamas (more importantly, the seizure panchnama) are not only far from truth but are also absolutely concocted and fabricated. It is further stated that in order to prove the innocence of the detenu and to bring out the highhandedness of the AIU officers in foisting a false case, the detenu desires to cross-examine the panch witnesses, the other State witnesses and officers who had dealt with the alleged seizure effected from the detenu and who had recorded his statements. It is further stated that after receiving the texts of such cross-examination reports, the detenu shall file his final detailed defence submissions in reply to the show cause notice. A prayer is made that a personal hearing may be given to the detenu at the earliest. It is also prayed that the witnesses named in the reply be made available for the purposes of cross-examination. The

detenu has reserved his right to cross-examine the persons other than the persons, whose names are mentioned in the reply if so required during the course of development of personal hearing, more particularly the hospital/police staff members, who purportedly attended to the detenu. It is clear from a reading of this reply that there is a bare denial of all the allegations made against the detenu. It is stated that the allegations are concocted and fabricated. As to why the allegations are false and as to why they are concocted and fabricated is not stated. The detenu has not given any idea about his case. All that he has prayed is that the witnesses be made available so that he can cross-examine them and a personal hearing be given to him.

24. In our opinion, in the facts and circumstances of the case, this reply cannot be called a reply containing such material as would persuade the detaining authority to take one view or the other of the matter. We do not find that this reply contains any material averments. So far as the denials are concerned, the detaining authority has correctly stated in her reply that the denials are also found in the anticipatory bail application dated 7/6/2004. In that bail application, the detenu has stated that the officers of the AIU had falsely implicated him. He has stated that he was assaulted and he received injuries. He has also stated that he was forced to make some signatures. The detaining authority has also referred to a copy of the complaint made to the

Commissioner of Customs, Sahar Airport, dated 9/6/2004. The detaining authority has also referred to a copy of the bail application preferred by the detenu on 9/6/2004 wherein the detenu had made allegations against the officers of the sponsoring authority. Therefore, the detaining authority had a clear idea about the defence of the detenu and the denial of the allegations made by him. Since, she could gather this knowledge from the other documents placed before her, non placement of the reply to the show cause notice, in the facts and circumstances of the case, would not render the order of detention invalid. It is true that in **Kurjubhai Dhanjibhai Patel's case (supra)**, the Supreme Court was dealing with a case where the show cause notice was placed before the detaining authority but the reply to the show cause notice was not placed before him. The Supreme Court observed in the facts of that case that the reply contained a retraction of the earlier statement made by the detenu under section 108 of the Customs Act and, therefore, it would have influenced the detaining authority one way or the other. But, in the facts of the present case, there is no pointed retraction of any of the earlier statements made by the detenu. A general statement is made that a false case is foisted on the detenu. As rightly stated by the detaining authority, in several other documents, which are on record, the defence of the detenu is indicated. The reply to the show cause notice, therefore, cannot be called a vital or material document.

25. In this connection, we may refer to the judgment of this court in **Smt. Hansaben Jayantilal Shah v. The Union of India, in Criminal Writ Petition No.1217 of 1993 decided on 27/10/1993** where a similar contention was raised. This court found that in the reply to the show cause notice, the detenu had informed that the detailed answer will be filed to the show cause notice after inspection of documents. The detenu had requested the Deputy Collector, Enforcement Directorate, Bombay to fix an appointment for inspection of the documents. This court observed that the reply stating that the detailed answer will be filed to the show cause notice after inspection of documents can, by no stretch of imagination, be called a vital document. It was further observed that mere denial of the contents of the show cause notice would not make the reply a vital document. In the circumstances, it was held that non placement of the reply to the show cause notice did not vitiate the order of detention. In our opinion, the ratio of this judgment is clearly applicable to the facts of the present case. Here also, there is a mere denial of the allegations. A prayer is made for personal hearing and for making the witnesses available for cross-examination. Such a reply can never be called a vital document particularly, when from the other material on record, the detaining authority was aware about the defence of the detenu and the fact that he had denied all the allegations. In the circumstances, in our opinion, this

argument of Mr. Gupte must also fail. No other submissions were advanced by Mr. Gupte. In our opinion, the order of detention is perfectly justified. It does not suffer from any infirmity and it deserves to be confirmed. There is no substance in the petition. The petition is, therefore, rejected. Rule discharged.

(SMT. RANJANA DESAI, J.)

(D.B. BHOSALE, J.)